

In the Matter of)

Amendment of Section 73.202(b),
Table of Allotments,

FM Broadcast Stations)

(Chillicothe, Dublin, Hillsboro and
Marion, Ohio))

MB Docket No. 02-266
RM-I0557

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To: Assistant Chief, Audio Division
Media Bureau

REPLY COMMENTS

CITICASTERS LICENSES, INC.
CLEAR CHANNEL BROADCASTING
LICENSES, INC.

Mark N. Lipp
J. Thomas Nolan
Tamara Y. Brown
Shook, Hardy & Bacon, LLP
600 14th Street, N.W.
Washington, D.C. 20005-2004
(202) 783-8400

Their counsel

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SUMMARY

At the request of the petitioners, the Notice of Proposed Rule Making in this proceeding proposed to amend the FM Table of Allotments to (i) relocate WMRN-FM from Marion, Ohio to Dublin Ohio, and (ii) relocate WSRW-FM from Hillsboro, Ohio to Chillicothe, Ohio. The petition demonstrated that Dublin, an incorporated city with a population of 31,392, although located within the Columbus Urbanized Area, is an independent community deserving of a first local service preference. In addition to providing Dublin with its first local service, the net result of the two relocations would be to provide new FM service to more than 600,000 people. No counterproposals were submitted. However, oppositions were filed by numerous Columbus-area broadcasters concerned about the impact of a new signal in the Columbus market on their broadcasting revenues. In these Reply Comments, the petitioners demonstrate that these oppositions are without merit, and that the relocations would clearly further the public interest.

The opponents allege a number of competitive harms from the proposed relocation of WMRN-FM from Marion to Dublin. However, these competitive concerns have no place in this proceeding, in which the Commission is solely charged with the distribution of radio stations among the various communities. Contrary to the opponents' allegations, the proposed relocation does not violate the 1998 settlement reached with the Department of Justice, and complies with the Commission's multiple ownership rules and revenue concentration guidelines.

The opponents also call attention to numerous insignificant aspects of Dublin's community indicia in an attempt to undermine the petitioners' showing that Dublin is independent of Columbus. These efforts are doomed to failure because of the abundance of evidence weighing in favor of a finding of independence. Dublin compares favorably with many other suburban communities to which the Commission has granted a first local service preference.

In the end, no issue raised by the opponents rises **above** the fourth (and lowest) of the Commission's allotment priorities, and even taken together the oppositions cannot overcome the strong public interest **benefits** of the **pctition**. Accordingly, the petition should be granted.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MB Docket No. 02-266
Table of Allotments,)	RM-10557
FM Broadcast Stations		
(Chillicothe, Dublin, Hillsboro and)	
Marion, Ohio))	

To: Assistant Chief, Audio Division
Media Bureau

REPLY COMMENTS

Citicasters Licenses, Inc., licensee of WMRN-FM, Marion, Ohio and Clear Channel Broadcasting Licenses, Inc.,¹ licensee of WSRW-FM, Hillsboro, Ohio (collectively, "Citicasters"), by their counsel, submit their Reply Comments in the above-captioned proceeding. The *Notice of Proposed Rule Making* in this proceeding proposed, at Citicasters' request, to amend the FM Table of Allotments to relocate WMRN-FM from Marion to Dublin, Ohio as that community's first local service, and WSRW-FM from Hillsboro to Chillicothe, Ohio. No counterproposals were filed. Oppositions to the proposal were filed by the Committee for Competitive Columbus Radio ("Committee"), Infinity Broadcasting Operations, Inc. ("Infinity"), and Sandyworld, Inc. ("Sandyworld").

I. COMPETITIVE CONCERNS ARE NOT RELEVANT TO THIS PROCEEDING, BUT EVEN IF THEY WERE, THEY DO NOT BAR THE RELOCATIONS PROPOSED HEREIN.

1. The Committee raises several competitive considerations in an effort to derail this proceeding. The Committee alleges that the relocation of WMRN-FM from Marion to Dublin

¹ Clear Channel Broadcasting Licenses, Inc. is the successor licensee to Citicasters Company.

would violate a 1998 settlement agreement between Jacor Communications, Inc. ("Jacor")² and the U.S. Department of Justice. The **Committcc** also alleges that the relocation would violate the Sherman Act and the Clayton Act. Finally, the Committee alleges that the relocation would create an undue concentration of broadcast revenues. These concerns are of no relevance to this proceeding, but even if they were to be considered at this stage, they would not weigh against granting the Petition.

2. It bears repeating that this is a proceeding to amend the FM Table of Allotments. Competitive concerns simply have not been an issue in allotment proceedings. In an allotment proceeding, the Commission is charged with ensuring that the mandate of Section 307(b) of the Communications Act is met, namely, to provide a fair, efficient and equitable distribution of radio service to the various communities. Thus, geographical and demographic concerns are paramount in an allotment proceeding, where a new distribution of radio service to the public is proposed. Competitive concerns, by contrast, have potential applicability only in a licensing proceeding. They have no business in this proceeding, in which the Commission must make an allotment to a community, not an assignment of license to a licensee.

3. Moreover, even to the extent that the Committee's concerns relate to the inability of the Columbus, Ohio market to support another radio station (as opposed to antitrust allegations solely directed to Citicasters and its parent company), these concerns are still not properly before the Commission. It is an established principle of broadcast law that allegations of economic injury or competitive harm are not cognizable in allotment proceedings. *FM Channel Assignments: Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988), *aff'd*, 4 FCC Rcd 2276 (1989). Therefore,

² Jacor was subsequently acquired by Clear Channel Communications, Inc. in a stock acquisition. Clear Channel is also the parent company of Citicasters.

the Commission should disregard Section II of the comments of the Committee (setting forth its competitive concerns) altogether. *See, e.g., Lewiston, Montana*, 15 FCC Rcd 24097 (2000) (disregarding competitive concerns); *Cheyenne, Wyoming*, 8 FCC Rcd 4473 (1993).

4. Even if it were proper to consider the specific arguments raised by the Committee (which it is not) they are either meritless or premature. First, Citicasters' petition does not violate the 1998 settlement between Jacor and the U.S. Department of Justice. The 1998 settlement was entered into as a result of Jacor's proposed acquisition of the radio stations owned by Nationwide Communications, Inc. Under the settlement, Jacor divested certain of the combined group of stations. There was no agreement regarding future conduct that could be violated by the proposed relocation. Moreover, the proposed relocation does not even raise the same concerns upon which the settlement was based. While the settlement could possibly have a bearing on Citicasters' acquisition of a *competitor's* radio station, it has no bearing on this proceeding, in which Citicasters seeks to introduce an additional station into the market.

5. For the same reason, the Committee's Sherman and Clayton Act allegations also fail. The Sherman Act prohibits a *combination* in restraint of trade.³ The Clayton Act prohibits an *acquisition* which would have a substantial effect on competition.⁴ The threshold for applicability in either case is a combination or an acquisition – the conversion of separate control over facilities or services to unitary control. Clearly, this proceeding does not cross that threshold, because no assets are being acquired or combined that are not already under common control.

³ Section 1 of the Sherman Act, 15 U.S.C. § 1. The statutory language refers to a "contract," "**combination**" or "conspiracy," but courts do not distinguish between these terms. *See Bogosian v. Gulf Oil Corp.*, 561 F.2d 434, 445 (3d Cir. 1977), *cert. denied*, 434 U.S. 1086 (1978). There does not appear to be any possibility of a **cognizable** cause of action under Section 2 of the Sherman Act, and the Committee does not allege such a cause of action.

⁴ Section 7 of the Clayton Act, 15 U.S.C. § 18

6. Finally, the Committee's allegation that the relocation would create an undue concentration of broadcast revenues is premature and unsubstantiated. With respect to multiple ownership, the ultimate location of either of the stations involved in this proceeding, and their overlap, if any, with other stations in the market, will not be known until construction permit applications are filed. However, using the allotment reference coordinates, a multiple ownership study has been conducted and attached as Exhibit A. It demonstrates that the WMRN-FM relocation complies with the current multiple ownership limits set forth in Section 73.3555 of the Commission's Rules.

7. There cannot even be a measurement of broadcast revenues until the stations are relocated and are broadcasting advertisements in this market, so there is no possibility of evaluating the claim that broadcast revenues are concentrated. Thus, even when a station owner with a combined revenue share of 53.6% in a broadcast market filed an application to acquire an unbuilt radio station in the same market, the FCC refused to consider broadcast revenue concentration issues in the assignment context because the Station was not currently in the market (since it was not yet operational).⁵ For the same reason, the Commission cannot consider revenue issues associated with WMRN in the Columbus market because the station is not currently in the market. Market concentration issues can be raised, if at all, only in the licensing proceedings that will follow the successful conclusion of this rule making proceeding.

8. Moreover, the Committee has not made any specific allegations that would even support a market concentration issue. The Committee notes that Clear Channel's current share of the Columbus market broadcast revenues is 36.6%. The Commission's policy is to flag applications for assignment or transfer that would result in a single entity's controlling 50% or

⁵ Letter from Acting Chief, Audio Service Division, Mass Media Bureau to Paul A Cicelski, Esq., et al. in re KCHY(FM), Hope, North Dakota, File No. BAPH-20001101ABD (May 24, 2001).

more of the revenues in a market.⁶ Thus, even if WMRN-FM were to capture 13% of the market – a difficult accomplishment as a class B1 covering only 71% of the Urbanized Area – it would not yet reach the FCC’s threshold for market concentration.

II. THE RELOCATION OF WMRN-FM TO DUBLIN WOULD FURTHER PRIORITY 3, AND NO OTHER ISSUE RAISED IN THE OPPOSITIONS RISES ABOVE PRIORITY 4.

9. As demonstrated in the initial petition, the allotment of Channel 294B1 to Dublin, Ohio would further priority (3) of the Commission’s allotment priorities, because Dublin would receive its First local service and more than 600,000 additional people would receive radio service. The opponents raise numerous allocation issues in an effort to derail this proceeding and further their own private interests. However, none of the issues raises considerations that rise above priority (4), and many of them contain allegations that are either premature or not legally cognizable in this proceeding. Each of the issues raised by the opponents is addressed in turn in the sections below

A. The Potential Loss of an FM Translator is Not Legally Cognizable in this Proceeding.

10. Sandyworld, licensee of FM Translator W294AH, Columbus, Ohio, states that W294AH would have to cease operation if the requested allotment of Channel 294B1 at Dublin is granted. It states, “The Commission should also consider the loss of service to the hundreds of thousands of people residing within the service area of W294AH.” Comments of Sandyworld at 3.’ However, the Commission does not consider the potential loss of service from a translator in allotment proceedings. See *Willows and Dunnigan, California*, 15 FCC Rcd 23852, 23856-57

⁶ See *Multiple Ownership of Radio Broadcast Stations in Local Markets*, NPRM and Further NPRM, 16 FCC Rcd 19861, 19870 [¶ 18] (2001).

⁷ Sandyworld also states that “there would be no net gain in service to a significant part of Columbus” because of the potential loss of its FM translator. *Id.* at 7 n.4 However, as shown herein, this conclusion is incorrect (as a matter of law). Any future loss in translator service cannot be counted against the service gains from the allotment proposals in this proceeding.

(2000); *Banks, Oregon et al.*, 13 FCC Rcd 6596, 6604 [¶ 17] (1998).⁸ Certainly, Sandyworld cites no case in which the Commission has refused to allot an FM channel in order to preserve the service of an existing translator.

11. The FM translator service is a secondary service.’ The Commission’s rules do not permit an FM translator to operate if it “causes any actual interference to [t]he direct reception by the public of the off-the-air signals of any authorized broadcast station.”¹⁰ No such actual interference to the reception of WMRN-FM has been alleged (nor could it be, since this is only an allotment proceeding). See *Kingston, New York*, 17 FCC Rcd 14326 (2002). The issue will not be ripe unless and until actual interference is caused, but if the allotment is made, an application is filed, broadcast operations are commenced, and actual interference is caused, the rules make clear that it is the translator that must give way. See Section 74.1203 of the Commission’s Rules.¹¹

B. A Travelers’ Information Service Station is Not a Local Service for Allotment Purposes.

12. Infinity notes that Station WNX474, a station in the Travelers’ Information Service (“TIS”) is licensed to Dublin. Infinity states that “the existence of this local radio service weighs strongly against” the Citicasters proposal. This statement is misleading and incorrect. It is misleading because “local service” is a term of art in allotment proceedings, and just like a translator, a TIS station is not a local service for this purpose. Infinity cites no case in

⁸ The Commission has considered the number of translators that would have to be shut down under different allotment scenarios, but only when choosing which channels to allot, and not when comparing conflicting proposals. See *Shelley and Sun Valley, Idaho*, 9 FCC Rcd 6474 (1994).

⁹ *Amendment of the Commission’s Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212, 7219 [¶ 48] (1990).

¹⁰ 47 C.F.R. § 74.1203.

¹¹ As Sandyworld suggests, it may be possible for Sandyworld to apply for a nonadjacent channel for its translator service when the next window opens.

which the Commission has recognized a TIS service as a primary transmission (local) service. Indeed, the existence of a TIS station carries no weight at all in an allotment proceeding. A TIS station is a secondary service, and as such, cannot create interference to, and must accept any interference from, any primary service facility.¹² Moreover, TIS stations may only broadcast certain content relating to road conditions and associated information.” Thus, Dublin’s TIS station is not a source of “local news and information,” as Infinity puts it, in the normal meaning of that phrase.

C. Neither Proposed Relocation Will Leave Any Unserved or Underserved Areas.

13. Sandyworld suggests that the relocation of WMRN-FM and WSRW-FM as proposed by Citicasters will leave unserved or underserved areas that were formerly served by these stations. In fact, the loss areas in both cases are well served. Attached as Exhibit B are four figures numbered 4, 5, 7, and 8 (tracking the figures of the same numerical designation in the original Petition). As demonstrated therein, most of the loss area will receive five or more aural services, although there will be small portions in which three or four aural services will remain

14. The services remaining in these loss areas are comparable to those of other relocations recently granted by the Commission. In *Scappoose and Tillamook, Oregon*, 15 FCC Rcd 10899 (2000), the Commission granted a reallocation from Tillamook to Scappoose even though it left 4,312 persons with four aural services, 2,461 persons with three aural services, and 19 persons with two aural services. In *Detroit Lakes and Barnesville, Minnesota*, 16 FCC Rcd 22581 (2001), the Commission granted a reallocation from Detroit Lakes to Barnesville even though it left 1,458 persons with four aural services, 449 persons with three aural services, and

¹² 47 C.F.R. § 90.242(a)(3).

54 person., with two aural services. Other reallocation cases have left substantial populations with only four aural services. *See, e.g., Earle, Arkansas, et al.*, 10 FCC Rcd 8270 (1995) (7,026 persons with 4 aural services). While leaving people with fewer than five aural services may not be desirable, it is merely a factor to be considered under priority (4). In this case, the overall gains of the Petition, including advancing priority (3) and providing new service to well over 600,000 persons, militate in favor of its grant.

D. Hillsboro Will Retain Local Service from WSRW(AM).

15. The opponents raise the issue that WSRW, remaining in Hillsboro, is a daytime-only A M station.¹⁴ However, in 1990, the Commission clearly stated that a daytime-only service constitutes a local aural transmission service for the purposes of applying the FM allotment priorities. *Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7097 (1990). Since that time, the Commission has granted numerous changes in community of license in which a community was left with a daytime-only service. *See, e.g., Grants, Milan and Shiprock, New Mexico*, 16 FCC Rcd 20323 (2001); *Ravenswood and Elizabeth, West Virginia*, 10 FCC Rcd 3181 (1995); *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995). Thus, based on applicable precedent, the retention of daytime A M service at Hillsboro is considered adequate to permit the relocation of WSRW-FM in order to make room for the provision of a first local service at Dublin.

16. The Hillsboro relocation must be considered together with the Marion relocation that it enables. The proper comparison in this evaluation is a first local service to Dublin (pop. 31,392) versus a third local service at Marion (pop. 35,318) and a second local service at

¹³ 47 C.F.R. § 90.242(a)(7).

¹⁴ See Comments of Sandyworld at 7, Infinity at 7, and the Committee at 14.

Hillsboro (pop. 6,368). Viewed in this light, the proposal produces a preferential arrangement of allotments by furthering priority (3) of the Commission's allotment priorities.

E. Dublin is Independent from Columbus and Deserves a First Local Service Preference.

17. Because the opponents have no real basis for challenging Dublin's independence from Columbus, they attack insignificant details of the community indicia presented in Citicasters' Petition. These allegations, even taken together, do not detract from the overwhelming evidence that Dublin is a community independent from the Columbus Urbanized Area, as more than adequately demonstrated in the Petition.¹⁵ Moreover, prior FCC precedent concerning this same urbanized area favors a finding that Dublin is a community independent from Columbus and deserving of first local service. Although Citicasters has demonstrated that a majority of the *Tuck* factors are present to justify the Commission treating Dublin as an independent community, each of the opponents' allegations is addressed below.¹⁶

18. First, Infinity, Sandyworld and the Committee highlight the fact that "only" 24% of the residents of Dublin work in Dublin, a fact that Citicasters discloses in its Petition. Petition at 5, and Comments of Infinity at 5, Comments of Sandyworld at 3-4, and Comments of Committee at 10. However, this percentage is well above the threshold for a favorable finding on this factor. See *Anniston, Alabama, et al.*, 16 FCC Rcd 3411, *aff'd by the Commission*, 16 FCC Rcd 19857 (2001) (the fact that 16% of the residents of College Park worked in College Park was sufficient for a favorable finding on this issue); see also *Albemarle and Indian Trail*,

¹⁵ *Faye and Richard Tuck*, 3 FCC Rcd at 5378; *Parker and Port St. Joe, Florida*, 11 FCC Rcd 1095, ¶¶ 9-11 (1996). The Commission has found that all *Tuck* factors need not favor the applicant, but the presence of a majority of the factors demonstrates that the specified community is distinct from the urbanized area. *Id.*

¹⁶ The Committee's reliance on *Fairfield and Norwood, Ohio*, 7 FCC Rcd 2377 (1992) is misplaced. That case was decided before the Commission settled upon the eight-factor *Tuck* showing and was based on a far more limited analysis. As such, it is of no

North Carolina, 16 FCC Rcd 13876, 13880 (2001) (11.3% of working-age residents worked in community); *Coolidge and Gilbert, Arizona*, 11 FCC Rcd 3610 (1996). Citicasters also notes that there is a large corporate presence with business in Dublin that employs Dublin residents. The Petition lists nationally known corporations such as Laboratory Corp. of America (“LabCorp”), Metatec Corporation, OSI, and BMW Financial Services, all with offices in Dublin. Petition at 5 and Exhibit 2.

19. Second, Infinity and the Committee criticize Citicasters’ reference to two of Dublin’s newspapers, arguing that one of the newspapers is printed in a plant in Columbus (Comments of Committee at 10), and that the Dublin advertising market is the same as Columbus (Comments of Infinity at 6). However, the location of a newspaper’s printing plant is irrelevant (for example, the fact that the *New York Times* is printed in Edison, New Jersey does not convert it into a New Jersey newspaper).¹⁷ Even if the *Dublin News* is printed in Columbus, it is published for and distributed to Dublin residents, and its advertisers seek to market their businesses to Dublin residents. Moreover, Dublin has not one, but **three** newspapers, and there is no doubt that the *Dublin News*, the *Dublin Villager* and the bi-monthly publication, the *Dublin Life* are targeted to residents of Dublin and that local Dublin businesses do in fact advertise in these publications. If businesses from Columbus also advertise in these papers, seeking to market to Dublin residents, that merely supports their stature as important sources of local news and advertising for Dublin residents. The Dublin Chamber of Commerce also provides an advertising outlet in its *Dublin Chamber News*. Petition at Exhibit 2.

20. Third, the Committee provided a “Yahoo” search on local government information, veteran’s organizations and medical facilities, which resulted in listings outside of

precedential value. Citicasters is not aware of any case in which an incorporated city was denied independent community status under a full *Tuck* analysis.

Dublin. Comments of the Committee at **10** and Exhibit **I**. But this cannot serve as evidence of Dublin's dependence on Columbus, since it could equally well be evidence of an improper search query. Moreover, even if the **U.S.** Attorney's Office and the public defender's office do not have a listing in Dublin, that would not make Dublin dependent on Columbus for legal services. Dublin residents have ample access to legal services. See Exhibit **C** (providing a listing of local attorneys in Dublin). As provided in Exhibit 2 of the Petition, Dublin, an incorporated city, has its own elected mayor and city council form of government, and as Sandyworld points out is qualified as a community for allotment purposes.¹⁸ Dublin also provides its own municipal services such as administration, finance, public safety, planning and zoning, parks and recreation. Petition at 7. Exhibit 2 of the Petition also demonstrates the accurate listings for Dublin, which includes city services, local businesses, local schools, local civic organizations, and local health care professional and medical services.

21. Dublin has its own school system and police department. Petition at **10-11**. While the Dublin local library is part of the Columbus Metropolitan Library System, it is still a Dublin library, available to residents of Dublin. Citicasters accurately disclosed in its Petition that fire services were provided by the Washington Township (not Columbus), and that Dublin did not have its own telephone directory. Petition at **10** and 7. Nevertheless, Dublin does not depend upon Columbus for these services, and they are provided independently of Columbus to the residents of Dublin.

22. Sandyworld states that many of the local churches and sports activities listed in the Petition are outside of Dublin. Sandyworld at 5. However, Sandyworld fails to provide any evidence from which addresses of these establishments can be determined. Citicasters' own

¹⁷ See "Producing the Paper" at <http://www.nytco.com/pdf-factbook/producing.pdf>.

¹⁸ See Comments of Sandyworld at 5.

Pctition provides a listing of **area churches** which include at least 20 churches in Dublin, several of which identify with Dublin in their **names**. Petition at Exhibit 2. The listing does identify other churches not in Dublin, but this is immaterial. Dublin residents have ample choice of religious establishments without **recourse** to those of Columbus. Sandyworld also indicates that one of the three zip codes listed in the Petition, 43064, is shared between Plain City, Ohio and Dublin. Sandyworld at 5. Even if only a few Dublin residents are assigned this rip code, however, the other two zip codes belonging exclusively to Dublin are sufficient to satisfy this factor in favor of Dublin's independence.

23. Finally, in a similar case in the same market with fewer community indicia, the Commission found that the community of Hilliard, Ohio was sufficiently independent from Columbus to warrant a first local service. *See Marysville and Hilliard, Ohio*, 14 FCC Rcd 18943 (1999).¹⁹ The Cornmission found that Hilliard was an incorporated community with its own elected officials. **It** had a full-time police department, elementary through high schools, community and civic centers, municipal parks and pools as well as a number of businesses, religious and civic organizations that identify themselves with **the** community as well as local health facilities. It also had two weekly newspapers. *Id.* at 18948-49. The Commission even recognized that Hilliard did not have its own local telephone directory and that its library, water and sewer services were provided by Columbus. *Id.* at 18949. These factors, however, did *not* preclude the Commission from **finding** that Hilliard was "sufficiently independent from Columbus to warrant a first local service." *Id.* at 18948. The result should be no different here.

24. In *Hilliard*, the Commission dismissed the argument that Citicasters was **attempting** to reallocate channels from small, rural communities to a well-served, urban community.

¹⁹ **Interstingly**, the **Committce** is comprised of **almost** the same group of licensees who filed comments in opposition to **Citicasters** in the *Hilliard* case. The Committee raises

Indeed, the Commission did not even discuss this issue in the context of its decision in *Hilliard*. Rather, it relied solely on Citicasters' demonstration under *Tuck* that Hilliard was a community independent from Columbus, as it should have, since the Commission abandoned such policies in 1983. *Id.* at 18946. Those policies have been merged into *Tuck*." The same argument holds true today. The opponents can no longer argue that the pre-1983 FCC policies discouraging reallocation of channels from smaller communities to larger ones have any bearing on this case, but must refute the evidence of independence of the community from the urbanized area under the *Tuck* factors. They have not done so and cannot do so in this case. The majority of the *Tuck* factors clearly favor the status of Dublin as an independent community deserving of a first local service preference.

F. The Proposed Amendments Together Constitute a Preferential Arrangement of Allotments.

25. Infinity attempts to dissect Citicasters' proposal, and argues that each of the proposed relocations taken by itself must result in a higher allotment priority, rather than an examination of the proposal taken as a whole.²¹ However, Infinity cites no case in which this was done, and it is contrary to the Commission's case law.²² The WSRW-FM relocation is necessary to give clear spacing to the WMRN-FM relocation, and since the two relocations cannot be severed, they must be considered together on their merits. As Citicasters demonstrated in its petition and reiterated herein, its proposal creates substantial public interest benefits. In

the same arguments as they did before, and the Commission should likewise dismiss those arguments as it did in *Hilliard*.

²⁰ See *Suburban Community Policy, Berwick Policy and De Facto Reallocation*, 93 FCC 2d 436 (1983) and *RKO General ("KFRC")*, 5 FCC Rcd 3222 (1990).

²¹ Comments of Infinity at 7.

²² See *Corinth, Scotia, and Hudson Falls, New York*, 16 FCC Rcd 13305 (2001); *Community of License*, 4 FCC Rcd 4870 ("We believe it is best to take into account the totality of the service improvements resulting from a proposed change in community of license when determining whether an allotment proposal should be approved.").


addition to providing a first local service at Dublin (priority 3), an additional 630,707 people will receive radio service. This population figure takes into account any persons losing service as a result of relocations, including WSRW-FM. The loss areas will remain well-served, retaining for the most part at least 5 aural services, with a few areas of 3 or 4 aural services. Opponents cite no case in which the creation of a loss area with no white or gray areas was a basis for overcoming a first local service to a large and independent community. The Commission routinely grants changes in community of license involving a transmitter site relocation, and each one necessarily involves a loss area. At most, this is a factor to be considered under priority (4) and cannot outweigh the provision of a first local service under priority (3)

III. CONCLUSION

The opponents have failed to raise any concern that detracts from the public interest benefits of this proposal. Accordingly, the Commission should grant the proposal forthwith.

Respectfully submitted.

CITICASTERS LICENSES, INC.
CLEAR CHANNEL BROADCASTING
LICENSES, INC.

By: 
Mark N. Lipp
J. Thomas Nolan
Tamara Y. Brown
Shook, Hardy & Bacon, LLP
600 14th Street, N.W.
Washington, D.C. 20005-2004
(202) 783-8400
Their counsel

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